



EMPLOYMENT TRIBUNALS

Claimant: Mr J Umoren
Respondent: Transport for London

JUDGMENT

The claimant's application dated 27 April 2023 for reconsideration of the Judgment sent to the parties on 26 April 2023 is granted and the Judgment is revoked.

REASONS

Background

1. The claimant has made an application for reconsideration of my Judgment dated 18 April 2023 which was sent to the parties on 26 April 2023. This was in his email to the Tribunal cc the respondent's solicitors dated 27 April 2023.
2. My Judgment struck out the claimant's claim on the basis that he had not complied with the Order of the Tribunal dated 7th of October 2021, was not actively pursuing his claim and had failed respond to our letter of 9 February 2023 requiring him to written representations as to his claim should not be struck out for these reasons. As a result of the strike out, the full hearing that was set for 23-26 and 30 May 2023 was vacated.
3. In an email dated 27 April 2023, the claimant wrote to the Tribunal cc the respondent's solicitors, explaining that he did respond to our letter of 9 February on 14 February 2023 and that he had complied (albeit belatedly) with the Tribunal's Order, and was taking active steps to pursue and prepare his claim for the full hearing. Indeed,
4. I subsequently obtained a copy of that email which I had not seen at the time I was requested to make the strike out Judgment. In addition, I was provided with a copy of the claimant's email of 20 February 2023, which I had not seen before, indicating that he had complied with the Order for disclosure of documents.
5. Once these emails had come to my attention, in mid May 2023, I instructed the Tribunal's administration to write to the parties explaining that I have provisionally considered the claimant's application for a reconsideration of my

Judgment and my provisional view was that it should be granted for the above reasons. Further, I gave the respondent 14 days in which to write indicating whether they agreed or disagreed with my provisional view. In addition, I invited both parties to write to the Tribunal within 14 days setting out their view as to whether the matter could be determined without a hearing and on the papers. The Tribunal wrote in these terms to the parties on 22 May 2023 and in that letter

6. By an email dated 5 May 2023, the respondent's solicitors wrote to the Tribunal agreeing with the claimant that the strike out Judgment should be removed and the hearing dates reinstated. The respondent did not indicate unequivocally that the matter could be dealt with without the need for a hearing on the papers but did make reference to the Tribunal's overriding objective.
7. Unfortunately, their email was not brought to my attention at the time and so I wrote my letter of 22 May 2023 being unaware of it. In any event, as I had already indicated in that letter, the hearing had been vacated and it was not possible to reinstate it given that a) the claim stood as struck out (pending reconsideration) and b) those dates were no longer available.
8. Indeed, I was unaware of the respondent's email of 5 May 2023 until during it was emailed to me during my absence from the office between June and mid September 2023 and the file was unbeknown to me, marked to be referred to me on my return. I could not deal with the matter during my absence and am only now in a position to do so.

The Tribunal Rules on Reconsideration

9. Under the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1:

“(Rule) 70. Principles

A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.

...

72.— Process

(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.”

10. The Employment Appeal Tribunal has given guidance as to the nature of a request for reconsideration:

- a) Reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to re-argue matters in a different way or adopting points previously omitted.
- b) There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule.
- c) It is not a means by which to have a second bite at the cherry, or is it intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered.
- d) Tribunals have a wide discretion whether or not to order reconsideration. Where a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.

Conclusion

- 11. Having regard to the circumstances, I determined that a hearing is not necessary in the interests of justice. The claimant's application and the respondent's reply are very clear, they both agree and the matter is narrow and discrete.
- 12. Have considered the substantial issue, it is clear that the strike out Judgment was issued in error given that crucial emails from the claimant had not been brought to my attention at the relevant time and so it is in the interests of justice to revoke it and reinstate the claimant's claim. Unfortunately, those emails were not withing the file of documents that was put before me at the relevant time. My apologies to the parties, the claimant in particular.

Further disposal

- 13. I direct that the matter be listed for the first available dates for a 5 day in person full merits hearing with members. I have instructed our listing department in this regard.
- 14. I would request that the parties contact the Tribunal within 14 days of the date that this Judgment is sent to them, marking their correspondence for my attention, indicating whether there are any outstanding Case Management Orders and whether any further case management is required. If the parties believe it is appropriate, this can be dealt with at a further case management discussion.

Employment Judge Tsamados
3 October 2023

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